

REMARKS

This Amendment is in response to the final Office Action dated May 14, 2002. A petition for a three-month extension pursuant to 37 C.F.R. §1.136 for response expiring November 14, 2002 is filed contemporaneously herewith. The requested fee has been enclosed. Further, a request for continuing examination is also enclosed with appropriate fee. Applicants request reconsideration of the rejection of the claims.

Claims 1 and 5-19 were examined in the Office Action. Applicants have cancelled claim 12, amended claims 1 and 13 and added new claim 20. Note that a markup of the amended claim is attached to this amendment.

Rejection Under §112, Second Paragraph Addressed

The Examiner rejected claims 1, 5-12, 16-19, second paragraph because the Examiner contends that it is unclear how one layer of fabric is to be attached to both the interior and exterior surfaces of the middle portion. Applicants have amended the problematic language in claim 1, thereby overcoming the §112 rejection.

Rejection Of Claim 1 Under §102 Addressed

The Examiner contends that Curley's collapsible toy anticipates applicant's cat toy claimed in independent claim 1. Amended claim 1 of the present case recites a cat toy which includes:

a flexible elongated tube capable of being position in a multitude of S-shaped curves, the tube having a first end, a second end, and a middle portion, the elongated tube made from a crinkly plastic film molded to a plurality of wire loops which form a helical frame structure, the helical frame structure having at least one wire loop per inch along the entire length of the elongated tube . . .

Thus the cat toy of the present case requires an elongated tube capable of being position in a multitude of S-shaped curves and having a helical frame structure with at least one wire loop per inch along the entire length of the elongated tube. Curley neither teaches nor suggests these features.

Instead, Curley discloses a support member that includes a linear elastic front support (7), linear back support (8) and single linear elastic central support (9). The single linear elastic central support achieving a spiral path as it traverses from the front support to the back support. The Curley outdoor structure is designed to collapse along central axis (33). This collapsible support member design does not allow for positioning in a S-shaped position nor does it show a helical frame structure having at least one wire loop per inch along the entire length of the elongated tube. Since Curley neither teaches nor suggests these features of independent claim 1, claim 1 is fully distinguishable over Curley.

Rejection Of Claims 6, 8, 10, 11, 13, and 14 Under §103 Addressed

Claims 6, 8, 10, 11, 13, and 14 have been rejected as obvious over Curley in view of what is known in the art. However, since claims 6, 8, 10 and 11 include the limitations from amended claim 1, and claims 13 and 14 have been amended with similar limitations as recited in claim 1, which are neither disclosed nor suggested by Curley, these claims are fully distinguishable over this combination and are now believed allowable.

Rejection Of Claims 5 and 15 Under §103 Addressed

Claims 5 and 15 have been rejected as obvious over Curley in view of Johnson. However, since claims 5 and 15 include the limitations from amended claim 1 or claim 13, respectively, which are neither disclosed nor suggested by Curley or Johnson, individually or in

combination, claims 5 and 15 are fully distinguishable over the combination of Curley and Johnson.

Rejection Of Claims 7 and 17 Under §103 Addressed

Claims 7 and 17 have been rejected as obvious over Curley in view of Westphal. However, since claims 7 and 17 include the limitations from amended claim 1, which are neither disclosed nor suggested by Curley or Westphal, individually or in combination, claims 7 and 17 are fully distinguishable over the combination of Curley and Westphal.

Further, Applicant does not believe that the child's tunnel play structure disclosed in Westphal is analogous art to the cat toy claimed in claim 7. A prior art reference is analogous art if (1) the reference is from the same field of endeavor; or (2) the reference is reasonably pertinent to the particular problem the inventor was trying to solve. Claim 7 recites the cat toy of claim 1 having a removable cover piece on either the first or second end of the flexible elongated tube. Applicant does not believe that cat toys and children's play structures are from the same field of endeavor. Further, for a reference to be pertinent to the particular problem, it would logically commend itself to an inventor's attention in considering the problem. *In re Clay*, 966 F.2d 656, 659, 23 USPQ.2d 1058, 1061 (Fed. Cir. 1992). The removable cover limitation recited in claim 7 is pertinent to providing a cat a secluded area for play or rest, the Applicant would not logically look to a patent defining a flap for a children's play structure for consideration of the problem. While Westphal discloses a play structure for children, the flaps appear to provide for the creation of maze-like structures, in which the children can play. Cat's are fickle and may require seclusion for full use of the cat toy, however, other cats may not require the privacy afforded by the cover on the cat toy. For this additional reason, Applicant believes that claim 7 is allowable.

Rejection Of Claims 9 and 16 Under §103 Addressed

Claim 9 and 16 have been rejected as obvious over Curley in view of Zoroufy. However, since claims 9 and 16 include the limitations from amended claim 1, which are neither disclosed nor suggested by Curley or Zoroufy, individually or in combination, claims 9 and 16 are fully distinguishable over the combination of Curley and Zoroufy.

Rejection Of Claim 12 Under §103 Addressed

Claim 12 has been rejected as obvious over Curley in view of Zheng. Applicant has cancelled claim 12 by amendment above, rendering moot the rejection with respect to this claim.

Rejection Of Claims 7, 18 and 19 Under §103 Addressed

Claims 7, 18 and 19 have been rejected as obvious over Curley in view of Maggio. However, since claims 7, 18 and 19 include the limitations from amended claim 1, which are neither disclosed nor suggested by Curley or Maggio, individually or in combination, claims 7, 18 and 19 are fully distinguishable over the combination of Curley and Maggio.

Further, Applicant does not believe that the portable changing room disclosed in Maggio is analogous art to the cat toy claimed in claims 7 or 19. A prior art reference is analogous art if (1) the reference is from the same field of endeavor; or (2) the reference is reasonably pertinent to the particular problem the inventor was trying to solve. Claims 7 and 19 recite the cat toy of claim 1 having a removable cover piece on either the first or second end of the flexible elongated tube. Applicant does not believe that covers for cat toys and portable changing rooms are from the same field of endeavor. Further, for a reference to be pertinent to the particular problem, it would logically commend itself to an inventor's attention in considering the problem. *In re Clay*, 966 F.2d 656, 659, 23 USPQ.2d 1058, 1061 (Fed. Cir. 1992). The removable cover limitation recited in claims 7 and 19 are pertinent to providing a cat a secluded area for play or

rest, the Applicant would not logically look to a patent defining a portable changing room/toilet for consideration of the problem. Maggio recites a "case lid" for maintaining the portable changing room in a collapsed state, by fitting over the perimeter of the structure and engaging a latch base via a series of fasteners. As such, the cover in this case provides a means for maintaining the structure in a collapsed state. The Maggio reference is not pertinent to the problem the Applicants solved – potential seclusion for a cat during rest or play. For this additional reason, Applicant believes that claims 7 and 19 is allowable.

SUMMARY

Claims 1, 5-11, and 13-20 of this application remain pending. In light of the foregoing amendments and remarks, it is believed that the application is in condition for allowance, prompt allowance is respectfully solicited.

This amendment is believed responsive to all points in the final Office Action, dated May 14, 2002 and is believed to put the case in condition for allowance. Should the Examiner have any remaining questions, he is encouraged to contact the undersigned attorney at the telephone number below to expeditiously resolve such concerns.

Please charge any additional fees or credit any overpayment to Deposit Account No. 04-1415.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned

"Version with markings to show changes made."

Dated this 14 day of November, 2002

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'P. J. Prendergast', written over a horizontal line.

Paul J. Prendergast, Reg. No. 46,068
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PJP/sd

cc: Docketing



VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Claim 12 has been cancelled.

Claims 1 and 13 have been amended as follows:

1. (Amended Twice) A cat toy comprising:....

a flexible elongated tube capable of being positioned in [contorted into] a multitude of S-shaped curves [curved positions], the tube having a first end, a second end, and a middle portion, the elongated tube made from a crinkly plastic film molded to a plurality of loops which form a helical frame structure, the helical frame structure [tubular shaped coiled wire scaffolding, the coiled wire scaffolding] having at least one [a plurality of loops] loop per inch along the entire length of the elongated tube, the middle portion of the elongated tube having an interior surface and exterior surface, and a layer of fabric attached to [both] the interior surface of the middle portion and a second layer of fabric attached to the exterior surface of the middle portion, wherein movement of a cat or other pet within the elongated tube causes the emission of noise from the crinkly plastic film.

13. (Amended) A method of fabricating a cat toy, the method comprising the steps of:

providing a spring-steel coiled wire having at least one revolution of coiled wire every inch;

molding a crinkly plastic film on the spring-steel coiled wire to form a flexible elongated tube having an interior passage, the flexible elongated tube being capable of positioning in a S-shaped curve; and
attaching a cloth layer to the interior passage [;and].